

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

## LESTER L. ENGLAND,

Plaintiff,

V.

DANIEL L. RODRIGUEZ, et al.,

## Defendants.

Case No. C07-5181RJB

ORDER GRANTING  
PLAINTIFF'S MOTION  
TO VOLUNTARILY  
DISMISS PURSUANT TO  
RULE 41(a)

This matter comes before the court on review of the Report and Recommendation of the Magistrate Judge (Dkt. 16) and on plaintiff's Motion to Voluntarily Dismiss Pursuant to Rule 41(a) (Dkt. 17). The court has considered the relevant documents and the remainder of the file herein.

On April 16, 2007, plaintiff filed this civil rights action. Dkt. 1. On July 23, 2007, U.S. Magistrate Judge J. Kelly Arnold issued a Report and Recommendation, recommending that the court dismiss the action (1) as barred by *Heck v. Humphrey*, 512 U.S. 477 (1984), and (2) for failure to state a claim against plaintiff's criminal defense attorney. Dkt. 16.

On August 7, 2007, plaintiff filed a motion, requesting that he be permitted to voluntarily dismiss the case pursuant to Fed.R.Civ.P. 41(a). Dkt. 17.

Fed.R.Civ.P. 41(a)(1) provides that a civil action may be voluntarily dismissed by the plaintiff before the adverse party has answered or filed a motion for summary judgment. Defendants have not yet been served in this matter. The court should therefore grant plaintiff's motion to dismiss this action. Because plaintiff has requested a voluntary dismissal of the case, the dismissal should not be considered a

1 dismissal for purposes of 28 U.S.C. § 1915A(b) and 28 U.S.C. § 1915(e)(2)(B).

2 Therefore, it is hereby

3 **ORDERED** that plaintiff's Motion to Voluntarily Dismiss Pursuant to Rule 41(a) (Dkt. 17) is  
4 **GRANTED**. The Report and Recommendation (Dkt. 16) is moot. This case is **DISMISSED**.

5 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any  
6 party appearing *pro se* at said party's last known address.

7 DATED this 22nd day of August, 2007.

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10 Robert J Bryan  
11 United States District Judge